

APPENDIX 9—EXCEPTION AND WAIVER CRITERIA

PROCEDURES FOR HANDLING REQUESTS FOR EXCEPTION FROM SEASONAL STIPULATIONS AND/OR CONDITIONS OF APPROVAL

The Wyoming Fish and Game Department (WGFD) has authority to set standards for exceptions and waivers to ensure that requests do not jeopardize wildlife populations. Therefore, the BLM will process request for exception and waiver in coordination with WGFD. A request for exception must be initiated in writing by the operator near the time that the work is proposed to be completed. The unpredictability of weather, animal movement and condition, etc., precludes analysis of requests related to wildlife far in advance of the time periods in question. Analyses of a request include review of potential mitigation measures and alternatives (traffic restrictions, alternative scheduling, staged activity, etc.). The request is considered as a unique action and is analyzed and documented individually for Resource Management Plan (RMP) and National Environmental Policy Act (NEPA) compliance. Processing includes coordination with the Wyoming and Game and Fish Department (WGFD) for seasonal wildlife-based lease stipulations or permit Conditions of Approval (COA).

CRITERIA FOR CONSIDERING EXCEPTIONS TO SEASONAL RESTRICTED ACTIVITY

Presently, land use activities within the Resource Management Plan Planning Area (RMPPA) may be authorized with a seasonal restriction(s), “no surface occupancy,” or a distance restriction for sensitive and crucial habitats. Stipulations were developed to provide protection of natural resources. Protective wildlife seasonal stipulations are developed consistent with statewide dates. For example, big game crucial winter ranges are protected from November 15 through April 30. This restriction is not intended to close an area to development but is in place to protect big game if weather or other habitat needs dictate that it is necessary.

Over the past few years, the public has received the impression that crucial winter ranges are off limits to any activity. This is true only when conditions dictate. The Bureau of Land Management (BLM) can and does grant exceptions to seasonal restrictions if BLM, in consultation with the WGFD, feels that granting an exception would not jeopardize the wildlife population being protected. BLM uses a set of criteria when considering a request for an exception. Professional judgment plays a key part in BLM’s decision to grant or not grant exception(s). There is no clear-cut formula.

Approximately 3,686,020 acres of federal land in the resource area currently has some type of lease stipulation. The following section describes some of the factors considered by BLM in determining whether a request for exception should be granted.

Big Game Winter Ranges

The criteria used for crucial big game winter range are based on the area available, whether that area is relatively intact, and whether it has a history of wintering most of the population at adequate body conditions for 8 or more years out of 10. The most crucial time period in the RMPPA is usually from January 1 through March 15, and during this period, the restrictions are generally enforced. However, during the remaining time in the standard statewide stipulation the authorizing officer is allowed the option to enforce a longer seasonal restriction if winter conditions warrant.

General Considerations for Granting Exceptions to Stipulations

Elk

- Short-term exceptions are more likely to be considered early (November 15–December 1) and late (April 1–30) in the winter season, depending on weather conditions and animal occupancy. Exceptions would not be granted if requested from December 1–March 1 unless unusually mild winter conditions prevail. Exceptions to stipulated elk calving areas' dates (May 1–June 30) will not be granted because of elk sensitivity to disturbance. Displacement in open habitats is much greater than in woodlots or forests, hence restricted areas will encompass larger areas in open habitat. Exceptions can be granted for north slopes, deep snow areas, or other habitats within crucial ranges that preclude use by wintering elk and in which access roads are determined to have little adverse impact.

Moose

- Exceptions will depend on weather conditions and presence of animals.
- Moose habitat is given protection through riparian and stream buffer zone stipulations (500 feet from live water and riparian habitats).

Antelope

- Exceptions may be granted except where physical barriers (i.e., highways, fences, rivers, canyons, etc.) limit animals' ability to move into other suitable habitats. Short-term exceptions may be granted early (November 15–December 1) and late (April 1–30) depending on weather conditions and animal occupancy. Exceptions would not be granted if requested from December 1–March 1 unless unusually mild winter conditions prevailed. Exceptions can be granted for north slopes, deep snow areas, or other habitats within crucial ranges that preclude use by wintering deer and in which access roads are determined to have little adverse impact.

Deer

- Short-term exceptions may be granted early (November 15–December 1) and late (April 1–30) depending on weather conditions and animal occupancy. Exceptions would not be granted if requested from December 1–March 1 unless unusually mild winter conditions prevail. Exceptions can be granted for north slopes, deep snow areas or other habitats within crucial ranges that preclude use by wintering deer and in which access roads are determined to have little adverse impact.

Raptors

- The “no surface occupancy” stipulation of February 1–July 31, within ½ or 1 mile of raptor nests can be shortened, depending on nesting chronology of individual species, nest site location, and topography. Certain types of short-term, minor disruptive land use activities that are not anticipated to affect nesting success may be granted.

Columbian Sharp-tailed and Greater Sage-Grouse

- A “controlled surface use” stipulation will be applied to a ½-mile radius of active sage-grouse strutting grounds, including no aboveground facilities (power lines, storage tanks, fences, etc.). Exceptions could be granted for disturbances such as low-traffic roads, pipelines, seismic activity,

etc. A controlled surface use stipulation will be applied March 1–May 20, within a ½-mile radius of active strutting grounds from 6 p.m. to 9 a.m. daily. Weather conditions, such as fog and cloudy conditions or clear, bright moonlit nights, can result in modification of the actual timing of this stipulation. Seasonal restrictions would be applied within a ¾-mile radius of leks to protect sage-grouse nesting habitat. Exceptions can be granted for areas within that radius not used for nesting, provided actual nesting areas are not affected. These time and date stipulations reflect recommendations from WGFD based on site-specific data for the RMPPA.

The following information would be considered regarding possible exceptions to stipulations protecting Columbian sharp-tailed and Greater sage-grouse during sensitive life cycles.

BLM would consider, but is not limited to, the following information in determining exceptions for projects located in the vicinity of leks:

- Presence of early lek activity (activity outside stipulated timing restrictions)
- Lek has been active in the past few years
- Location of proposed activity
- Duration of proposed project
- Possible geographic feature that would shield activity from lek activity (depending on topography and activity type).

BLM would consider, but is not limited to, the following information in determining exceptions for projects located in the vicinity of nesting activity:

- Nesting habitat is present
- Location of proposed project
- Duration of proposed project
- Possible geographic feature that would shield activity from nesting activity (depending on topography and activity type).

The final determination for granting an exception to wildlife stipulations will be a decision by BLM after consultation with the WGFD.

These procedures will be used for any request for exception for a surface-disturbing activity.

MODIFICATION OR WAIVER OF LEASE TERMS OR STIPULATIONS

“A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30 day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.” (43 CFR 3101.1-4)

The modification or waiver of an oil and gas lease term implies that the sensitive resource for which the protective measure was considered is in some way not present in the area or in some way is no longer in need of the protective measure. In either case, consideration of a modification or waiver of a lease stipulation would require environmental analysis and may result in an amendment to the land use plan.